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Marketing Agreements and Orders

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for FRUITS and VEGETABLES

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TABLE OF CONTENTS

	Page
PURPOSE	3
WHAT CAN BE DONE THROUGH MARKETING ORDER PROGRAMS	4
Regulation of Quality	4
Regulation of Quantity	4
Standardization of Containers or Packs	5
Research and Development Projects	5
Unfair Trade Practices	5
Price Posting	5
Marketing Information	5
COMMODITIES COVERED	6
WHO AND WHAT ARE REGULATED	6
REGULATION OF IMPORTS	7
DIFFERENCE BETWEEN A MARKETING AGREEMENT AND A MARKETING ORDER	8
HOW A MARKETING ORDER IS INSTITUTED	8
Steps in Developing an Order	8
Conditions Under Which a Marketing Order Can Be Issued	10
Area Covered By a Marketing Agreement or Marketing Order	11
OPERATING A MARKETING ORDER PROGRAM	11
Administrative Committees	11
Financing a Marketing Order Program	11
Issuing Regulations	12
Inspection Requirements	12
Enforcement	12
Exemptions	13
TERMINATING AN ORDER	13

MARKETING AGREEMENTS and ORDERS for FRUITS and VEGETABLES

PURPOSE

Marketing agreements and orders are designed to improve returns to growers through orderly marketing. They are self-help programs, through which fruit and vegetable growers can work together to solve marketing problems that they cannot solve individually.

Under a marketing agreement and order program an industry can regulate the handling and marketing of its crop. It can prevent erratic flow of its product to market, prevent low-quality produce from depressing prices, standardize containers, or attack other marketing problems that may trouble it.

In many ways marketing agreement and order programs are an extension of the cooperative marketing principle. The idea underlying these programs dates from farmers' first cooperative efforts to improve the quality of marketings and balance shipments with market demand.

Marketing agreement and order programs are authorized under the Agricultural Marketing Agreement Act of 1937. They can regulate the handling of commodities in interstate or foreign commerce--and this includes commodities that do not cross State lines if they burden, obstruct, or affect interstate commerce.

The Act itself does not impose regulations over the marketing of any agricultural commodity. It merely provides the authority under which an industry can develop regulations to fit its own situation and solve its own marketing problems.

The Secretary of Agriculture is responsible for administering these programs, and he makes the final decision on all marketing agreement and order actions. His decisions, though, are based on the recommendations which come from the industry.

WHAT CAN BE DONE THROUGH MARKETING ORDER PROGRAMS

Here are the principal types of activities which are authorized under marketing orders. Any one or a combination may be used to fit the program to an industry's particular situation.

A. Regulation of Quality. Regulating the quality that can be shipped helps keep inferior grades of the commodity from depressing the market for the whole crop. It also helps build consumer confidence. It is accomplished by establishing the grades, sizes or maturity of the commodity which can be shipped in the regulated trade channels. These requirements may be changed from season to season, or within seasons, as supplies and demand change.

B. Regulation of Quantity. There are two general methods of regulating quantity of the commodity marketed--by rate of flow, and by total quantity. Flow regulations are concerned primarily with keeping an orderly flow of the commodity moving to market during the normal marketing season. This is done by handler allotments, which restrict the amount of commodity which handlers may ship during a given period. These allotments usually are based on the amounts currently available to the handlers, or on the amounts shipped by each handler in a previous period, or a combination of the two.

Rate-of-flow regulations may or may not reduce the total amount of the crop marketed, but they help tailor current supply to demand and avoid periodic gluts and scarcities.

The practicality of regulating the total quantity of a crop shipped during an entire season depends to a large extent on whether the commodity can be stored for all or part of a season and the methods by which it is normally marketed. Another important consideration is the extent of organization within the industry for working together on marketing problems. Under this type of regulation, the industry estimates supply and demand for the year, and holds any excess supply out

of its regular trade channels. The "surplus" is moved into noncompetitive outlets and the proceeds are prorated among the growers.

C. Standardization of Containers or Packs. Some marketing orders permit regulations on the size, capacity, weight, dimensions, or pack of the containers used by the industry. This enables them to standardize on the types of containers and packs that are desired by receivers and consumers, eliminates deceptive containers, and also makes it easier to service large buyers.

D. Research and Development Projects. A provision of this type allows the industry to use marketing order funds to set up marketing research and development projects which will improve the marketing, distribution, and consumption of the commodity covered. For example, in order to expand consumption, a market development project might be undertaken to find new uses for the commodity or to disseminate educational information on the commodity. However, funds may not be used for direct advertising or sales promotion programs.

E. Unfair Trade Practices. The terms of a marketing order may specify unfair methods of competition and unfair trade practices which are prohibited.

F. Price Posting. Handlers may be required by the terms of a marketing order to file their selling prices and give specified advance notice before changing them.

G. Marketing Information. Detailed statistics and shipping information are needed in operating a marketing order program effectively. This same information, of course, is extremely useful to individual growers and handlers in making their marketing decisions. Under many orders, administrative committees are authorized to collect this information and disseminate it throughout the industry.

COMMODITIES COVERED

Marketing orders may be issued for any fruits, vegetables, tree nuts, peanuts, or hops, and their products--or any regional or market classification of the commodity or product--with the following limitations:

(a) Orders on apples are limited to those grown in the States of Washington, Oregon, Idaho, New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut.

(b) Orders on fruits and vegetables for canning and freezing are limited to asparagus, olives, grapefruit, cherries, and cranberries, and to apples grown in New York, Michigan, Maryland, New Jersey, Indiana, California, Maine, Vermont, New Hampshire, Rhode Island, Massachusetts, and Connecticut.

The above list includes raw commodities going to canners or freezers. Orders covering canned or frozen products can be issued only for asparagus and olives.

(c) No marketing order can be applicable to peanuts produced in more than one of the three principal production areas.

A marketing agreement can be entered into covering any agricultural commodity or product thereof.

WHO AND WHAT ARE REGULATED

Marketing orders regulate handling for the benefit of the producer. Since every fruit and vegetable crop is handled at least once in the marketing process, the logical place to apply regulation is at the handler level. It is the handling function, rather than the handler, that is being regulated.

The definition of "handler" and "handling" depends on the particular crop and area. As defined in most orders, a handler is anyone who handles (for example, acquires, grades, washes, packs, or processes) the commodity, sells the commodity or is responsible for selling it, or transports the commodity. All handlers, except hired carriers like trucking firms and railroads, are responsible for seeing that their product meets the grade, size, quality, or other requirements set up under the program.

Growers may not be regulated under marketing orders as long as they are acting only as growers. When they perform handling functions, however, they become handlers as well as growers. For example, if a grower grades and packs his own crop, he can be regulated as a handler.

Neither is a retailer regulated as a retailer. If he functions as a handler, though--by operating a packing shed within the production area for example--then he is a handler and subject to regulation.

REGULATION OF IMPORTS

Whenever the quality of domestic shipments of certain commodities is regulated under marketing orders, imports of those commodities are regulated too. The commodities so regulated are tomatoes, green peppers, Irish potatoes, eggplant, cucumbers, avocados, mangoes, limes, grapefruit, oranges, onions, walnuts, and dates (other than dates for processing). When grade, size, quality, or maturity regulations are in effect under a marketing order for any of these crops produced in the United States, the Secretary of Agriculture must issue import regulations with the same or equivalent requirements. Import regulations only apply, however, when domestic shipments are actually being regulated.

DIFFERENCE BETWEEN A MARKETING AGREEMENT AND A MARKETING ORDER

Marketing agreements and orders generally are spoken of synonymously. Rarely is a marketing agreement established without a marketing order; or an order established without an agreement. When both a marketing agreement and an order are used, their regulatory terms are identical. There is a basic difference, however, A marketing agreement is an agreement between the Secretary of Agriculture and the handlers of a particular agricultural commodity. The agreement is voluntary and its terms apply only to the handlers who sign it. The marketing agreement alone seldom would be effective in achieving the purposes of the Act since there are always some handlers who fail to sign.

Under a marketing order, though, the Secretary of Agriculture makes the terms of the marketing agreement program effective on all handlers in the industry, whether or not they sign the agreement.

HOW A MARKETING ORDER IS INSTITUTED

A. Steps in Developing an Order.

Developing a marketing agreement and order program takes considerable time and effort on the part of the growers, handlers, and others in the industry involved. The following steps are necessary before a program can be established:

1. The preliminary proposal for a marketing order program is drafted by growers and handlers in an industry after they have analyzed their marketing problems and concluded that a marketing order program would be of benefit. There must be solid support for a marketing program within the industry, and general agreement should be reached on the types of regulatory activity to be proposed.

2. The industry proposal is submitted to the Secretary of Agriculture, with a request for a public hearing. The request for a hearing should be signed by individuals or organizations representing the majority of the industry.

3. A public hearing on the proposed marketing order is required by the Act, and is held in the area covered by the proposed program. Notice of the hearing must be given at least 15 days before the day of the hearing. Copies of the notice, along with the terms and provisions of the proposal, are mailed to all known growers and handlers.

   The hearing is presided over by a Hearing Examiner. All evidence and testimony are taken under oath and cross-examination is permitted. Both proponents and opponents are free to present evidence in support of their positions.

   The hearing is an important step in the development of a marketing order program and should be given a great deal of attention. Any order issued must be supported by substantial and reliable evidence contained in the hearing record. This record should contain an explanation of how the proposed marketing order will fit the particular conditions in the industry and how it will help to solve the industry's marketing problems. Consequently, complete and detailed preparation for the hearing is necessary. At the close of the hearing, a period of time is fixed during which written briefs or arguments may be filed.

4. A recommended decision is prepared and filed by the Department after the expiration of the period for filing briefs. This recommended decision outlines the issues developed at the hearing, and the way in which they were resolved. It also contains the terms of the recommended marketing agreement and order, as revised on the basis of the hearing evidence. After the recommended decision is announced, interested parties are given time to file exceptions to it.

5. After the exceptions to the recommended decisions are analyzed, the decision of the Secretary of Agriculture is prepared and announced. This decision, with rulings on any exceptions, contains the findings and conclusions on the final terms and provisions of the marketing agreement and order.

6. A referendum is conducted among the producers affected to determine whether or not they favor the proposed marketing order. The referendum is conducted by the Department and ballots are held confidential. A summary of the proposed order is included in the referendum ballot. At the same time, copies of the marketing agreement are submitted to handlers for their signatures.

B. Conditions Under Which a Marketing Order Can Be Issued.

A marketing order for any eligible agricultural commodity can be issued only under the following circumstances:

1. At least two-thirds of the growers voting, in a referendum, by number or by volume of production, must approve it.

2. The handlers of not less than 50 percent, by volume, of the commodity covered by the marketing agreement must sign the agreement. (In the case of California-Arizona citrus programs, the handlers of not less than 80 percent of the crop must sign the agreement.)

3. If the handlers sign the agreement and producers approve the order, the Secretary may issue an order making the terms of the program effective upon the entire industry.

4. If handlers fail or refuse to sign the agreement, the Secretary may still issue an order (except in the case of apples, cherries, cranberries, and grapefruit for canning or freezing) if he finds and determines that it is the only practical means of advancing the interests of producers, and that the failure of handlers to sign the agreement tends to prevent the declared policy of the Act from being carried out. Processors of at least 50 percent of the volume of apples, cherries, cranberries, or grapefruit, canned or frozen, must approve the issuance of an order covering one of these fruits for canning or freezing.

C. Area Covered by a Marketing Agreement or Marketing Order.

There is no specified area which must be included under a marketing agreement or marketing order, but the Act requires that any marketing agreement or marketing order be limited to the smallest regional production area practicable.

OPERATING A MARKETING ORDER PROGRAM

A. Administrative Committees.

Every marketing order program for fruits and vegetables is operated by an administrative committee. The committee is made up of growers, or growers and handlers, who are nominated by the industry and appointed by the Secretary of Agriculture. Their terms of office, powers, duties, and obligations are spelled out in the marketing order.

The committee operates the program at the industry level. In addition to initiating recommendations for regulations to be issued under the order, the committee may undertake other activities for the benefit of the industry so long as they are in accord with the marketing order provisions.

B. Financing a Marketing Order Program.

The money for local administration of a marketing order program comes from assessments on handlers. This is specified in the Act. Each year the administrative committee recommends a budget and a proposed rate of assessment to the Secretary of Agriculture. The Secretary fixes the amount the committee may spend and the assessment rate on handlers. The assessment is in terms of so much per box, bag, ton, car, or other unit of commodity handled. The committee is responsible for all expenditures, and is required to keep accurate books and records. Annual audits of the books are required.

If more money is collected than is needed to finance the program, it may be credited to the handlers for the following year, paid back on a pro rata basis, or placed in an operating reserve fund.

C. Issuing Regulations.

The administrative committee is responsible for analyzing crop and market conditions and recommending to the Secretary of Agriculture the regulations that should be issued and the periods of time they should cover. If the Secretary approves these recommendations, then the appropriate regulations are issued.

This system permits the industry representatives to design the regulations--a highly important function, because marketing orders are merely enabling documents. Except in a few cases, where minimum standards of quality and maturity are written in, marketing orders merely specify the types of regulation that can be used, and their permissible scope. The real effectiveness of the marketing order depends on the development of appropriate regulations.

In some seasons, however, there may be no need for regulation because of a short crop or some other reason. In that case, the program can be suspended or remain inoperative. Moreover, regulations do not have to be maintained continuously during an entire season.

D. Inspection Requirements.

Inspection of all shipments may be required under a marketing order to ensure that such shipments meet the quality or other requirements of the order. In most cases the inspection is performed by the Federal or Federal-State Inspection Services.

E. Enforcement.

The enforcement of a marketing order is primarily the responsibility of the Federal Government, but the administrative committee is charged with the duty of investigating and reporting complaints of violation. Violations are investigated and turned over to the

Department of Justice. Three types of legal action may be taken in Federal courts against a person who violates an order:

1. Civil action may be brought to obtain an injunction. This forbids the handler to further violate the order, and makes him liable to contempt of court proceedings if he does so.

2. Criminal action may be brought and convicted persons may be fined not less than $50 and not more than $500 for each violation.

3. Civil suit may be instituted for damages. A handler may be required to pay a sum equal to the value of the product shipped in violation of the allotment provisions of an order.

F. Exemptions.

A marketing order may provide for exemptions to growers under certain conditions. For instance, a grower might have his crop badly damaged by hail so that only a small part of it could be shipped under the marketing order quality regulations. An exemption might be granted, authorizing him to ship as large a proportion of his crop as the average shipped by the entire industry. This type of provision can be included in any order, if the industry feels it is advisable.

Each marketing order also specifies the types of shipments that are not covered, and not subject to regulation.

TERMINATING AN ORDER

Whenever a majority of the growers, who also produce at least one-half of the crop, ask the Secretary of Agriculture to terminate an order, he must do so. The Secretary also must terminate or suspend a marketing order program if he determines that it no longer carries out the declared policy of the Act.

Forty-three marketing agreement and order programs are in effect for fruits, vegetables, and tree nuts produced in twenty-one States. [1] The products handled under these programs have a farm value of approximately one and one quarter billion dollars. Commodities and areas covered by these programs include:

Commodity	Area
Fruits	
Oranges	Florida, California, Arizona, Texas
Grapefruit	Florida, California, Arizona, Texas
Tangerines	Florida
Tangelos	Florida
Lemons	California, Arizona
Limes	Florida
Avocados	Florida
Peaches	California, Georgia, Colorado, Utah, Washington
Plums	California
Bartlett pears	California
Fresh prunes	Washington, Oregon, Idaho
Winter pears	Oregon, Washington, California
Apricots	Washington
Sweet cherries	Washington
Tokay grapes	California
Nectarines	California
Dried prunes	California
Raisins	California
Grapes for crushing	California
Dates	California
Vegetables	
Potatoes	Idaho, Oregon, Washington, California, Colorado, North Dakota, Minnesota, South Dakota, Virginia, North Carolina, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island
Carrots	Texas
Lettuce	Texas
Tomatoes	Texas, Florida
Peas	Colorado
Cauliflower	Colorado
Onions	Idaho, Oregon, Texas
Tree Nuts	
Almonds	California
Filberts	Oregon, Washington
Walnuts	California, Oregon, Washington

[1] As of November 1961.

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